P. F. 64 of 94

G. R. S. IX-5]

Previous references.

1893-94

~~192~~ .

(L. R.)

File No. 115 of 93

Serial Nos. 1–6

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1–6

Major ~~Part~~ B for November 1894

SUBJECT.

Appeal of Sri Bhimayappa regarding the Shanbhogi of Bellur & other villages in Yedatore Taluk.

Discontinued

WD 2233—GPB—20,000—14-6-20

Indexed

Deed of Settlement executed by
Kamehameha on the 7th January 1842
(Equivalent to the 11th day of the Sixth
Lunar month of the year Hana)
in favor of his four Sons viz. Kauikeaouli,
Victoria Kamamalu, Alexander Liholiho and Lot Kamehameha.
It is as follows:—

I the aforesaid Kamehameha
by your mutual agreement on the 13th
day of the Sixth Lunar month of Hanaia-
-lua of the year Hana you have
kindly desired that each of you should
control the duties of both the offices of Pal-
-aiahopio for three years; but you
have not stated which of you
should first take up the duties.
Consequently therefore if you
with the said Alexander Liholiho re-
-ceive with pleasure this present Writing
this day Entitled with your mutual
Assent and in accordance with justice
as follows.

Since Kauikeaouli and Victoria
have been constituting the Chiefs of
Districts of Chiefships of the Kingdom
the Kalae, respectively from Kalig-

of the year Eighty, both of which will complete their terms of three years by the End of June, 1882 (Class). Three years after the said year, Subscribers, Successors Shall conduct the Duties of the office of Chaplain of the Hotel and Same that of the Valve - After they complete their terms of three years Successors Shall conduct the Duties of the office of Chaplain of the Hotel and Navigation Act of the Valve - When they complete their term of three years, Same Shall conduct the Duties of the office of Chaplain of the Hotel and Successors Act of the Valve - They Shall conduct their respective Duties in conformity with the terms of the Settlement. The person who Shall be Appointed Chaplain Secretary Successors immediately after the conduct in conformity with the position Effected by this according to Settlement Made in any persons by their Mutual agreement. Every they Conduct the Duties in accordance with the above Settlement for Many years to come and for Ever.

3

Deposition of Lieutenant Chase
Captain Gillis

Sgt. Rivers.

Volunteered to the assistant
surgeon to the hospital
Was then volunteered to the assistant.

4

4

Plaintiffs' claim was decreed by the Dy Commr.

1st Defts has preferred this appeal.

On the 27 September last, on which the appeal came on for hearing the Advocate for the respts (Plffs) was first & all called upon by the Councillors to support the judgment of the Dy Commr. The Advocate argued that Plffs right was a precedential one under the deed of Settlement and that his cause of action arose about 1884 when the 1st Defts denied his right. He said that every time his turn came he had a fresh cause of action and that he could bring a suit within 12 years from that period. He referred to Article 131 of the 2nd Schedule to the Limitation Act. Appellants' Advocate represented that he was not prepared to argue the point as it was raised for the first time here and applied for an adjournment which was granted.

The deed of Settlement provides that from 1st July 1842 Vinnesvaiah should do the duties of the Hobli, Ramiah of the Kalue, from 1st July 45 Krishniah should do the duties of the Hobli and Nagappah of the Kalue; and that from 1st July 1848 Vinnesvaiah should do the duties of Hobli and Ramiah of Kalue and so on.

It is admitted by Plff (Respt) that he has not been doing duties of the office at least since 1856. It has been found by the Commr that Plff has failed to prove that he received a share of the emoluments at any time for any period. The present suit was filed on the 31st Oct 1892. The only question for determination in appeal is whether the suit is not barred (having regard to Articles 13, 124 of the Limitation Act) and

Sec 15 Bombay L. R. 135

5

Three Issues were afforded to the Leale.

On the 3rd Feb 1887.

Plaintiff, Executor of Hinchcliffe deceased, in pursuance of Order made on the Application of the Defendant for the Plaintiff to give Security for Costs of Action & Counterclaim & Stay of Proceedings until Security given, & Costs of Application & Costs of Action & Counterclaim to abide event of Action, & Stay of Proceedings until Security given.

1st Defendant pleaded that the deed of Settlement dated 1st Feb 1875 was not his Genuine Act and Deed, that he had been long before the year 1856 and that the claim was barred by limitation

1st Issue Whether the deed of Settlement was Genuine, and whether Plaintiff was entitled to Succession a share of the Residuary Estate of the Testator

Finding for Defendants. Genuineness of the deed

2 Issue Whether the deed is binding on 1st Defendant

Finding - Yes.

3rd Issue - Is the Claim not barred.

Finding — No.

(General Serial No. 32.)

1893.

(2)

No. 1507

Name of Petitioner. Subbarayappa
by his G.P.A. Narasimha Rangaiyar

Village.

Taluk.

District.

LR 115 93-1

Date of Appl.

Date of Receipt. 3-12-93

Date of Disposal.

No. of Enclosures. Nil

ABSTRACT.

Appeal against the judgment
of the deputy commissioner
dismissing an application for
injunction on the following grounds.
1) The lower courts have held
that Exhibit H is executed
by the defendant
2) The reasoning given by the lower
court for holding that plaintiff
has not established his right are not
correct.

Pet ✓
1906

28-5

MYSORE DEWAN'S OFFICE.

PETITION DEPARTMENT.

10

OFFICIAL MEMORANDUM.

The accompanying Petition No.s 1057 & 2854
dated 20th april 94 received at the
Dewan's Office from Subbaroya appa Son
of Shanbhog Ramiah, appealing
against the order of the Deputy
Commissioner, regarding the Shanb
of Bellur and other villages of the
Jedatore Taluk.

are/is forwarded, together with ~~its~~ their 2
enclosures, to the Deputy Commissioner
Mysore District for submission
of the entire proceedings relating
to the case
the petitions and ~~its~~ their enclosures
should be returned.

LR 115-93-2

By Order,

Chief Secretary.

Bangalore, 14/5/94.
May 1894

Ins
21/5

M.G.C.P.Bangalore.—3-5-94.—1,000.

1st The Lower Court erred in holding that 1st to 4th defendants possessed the right by virtue of having the Plaintiff's the name of his, over the 3rd to 4th 5th defendants + that cause of action to plaintiff since accr.

2) The Lower Court erred in holding that plaintiff's suit is not barred by limitation

(5) The Lower Court erred in ~~holding the~~ holding the defendant with plaintiff's costs.

(General Serial No. 30.)

1894.

From The Ry Commissioner Mysore

To The Chief Secretary to Govt Mysore

Dated 20/3/94

Despatched

Received LR 115 93-3

Enclosures No. Subm proceedings petn & witness

General No. 175

No.

Submits with papers the petition of Subbanayappa in re Shanbogueeof Bellur &c., & details his

Ptd to 27 Idem
Give Notice to both parties
Ltr 27/3

Notice issued
4/9/94.

Pet Branch
4/8/94

B (1)

COURT FEE
TWO RUPEES

Two Rupees Stamp

In the Court of the Dewan
in Council

A.S. No 116 / 93-94

Revenue Appeal No of 93-94.

Appellant.
Subbarayappa.
(1st deft.)

Respondent.
Ramanna.
(Pff).

The 1st defendant abovenamed begs to appeal against the judgment of the Deputy Commissioner of ~~Bang~~ Mysore District in Revenue Case No 4 of 1892-93 on the following grounds:—

I. The Lower Court erred in holding that Exhibits A. B. and C. are admitted by the defendant.

II The reasons given by the Lower Court ~~for~~ holding that plaintiff has not lost his right ars

1507 R
8-12-93

3-3-94

3-3-94

3-3-94

3-3-94

(6)

No 175

Deputy Commissioners office
Mysore District

Dated Mysore 20 August 1894

From

A Rangaraaru Iyengar Esquire B.A.B.L
Deputy Commissioner
Mysore District

To

The Chief Secretary to the
Govt of Mysore
Bangalore

Sir

I have the honor to submit herewith the entire proceedings relating to the case of Subbarayappa, regarding the Shanbogue of Bellur, and other villages of the Yedatore Taluq as directed in your circ no Pet 1906, dated 28th May, 1894. The petition and enclosures received with the above, are herewith resubmitted.

I have the honor to be
Sir
your most obedient Servant

A Rangaraaru
Dy Commissioner
Mysore District

Correct
Uly

15

No. 1507

OFFICE OF THE
11 JAN. 94
DEWAN OF MYSORE

By order

Chief Secretary.

are not bound.

III The Lower Court erred in holding that defendant acquired the right by transferring the Tirkan to the name of his son the 3rd & 4th and 5th defendant and that cause of action to plaintiff hence arose.

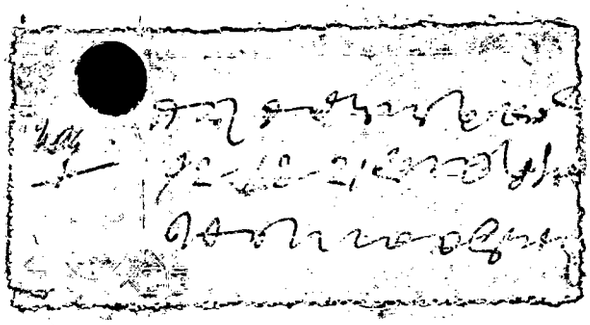
IV The Lower Court erred in holding that plaintiff suit is not barred by limitation.

V The Lower Court erred in holding the defendant with plaintiff cost.

L. Narasimha Rao
Adv for appellant

Insufficient stamp of 8 and affidavit and doctor certificate have been produced herewith.

20-3-94 S.C.



In the Court of the Deputy Commissioner
Mysore District

Revenue, Regular case no: 4 of 1892-93.

Present. K. Mahammed Ali Esquire

Asst: Deputy Commissioner
Mysore District

Plaintiff
Ramanna of Saligrama.

Defendants.
1. Subraya son of Shanbogue Ramiah.
2. Shamanna son of Visweswariah
3. Ramanaiah } these are the
4. Sectaramiah } sons of
5. Jayaraya } 1st Defendant

This is a suit for the recovery of the Shanbogue Inam in Bellur, and the other 10 Villages of the Yedatore Taluk on the ground that he and the two defendants are the grandsons of Ramiah who was the original shanbogue, and who when dividing his properties amongst his 3 sons, made an agreement that each son

17 you should perform the duty of the office alternately for 3 years, and that accordingly the Plaintiff's father and Plaintiff were receiving the emoluments attached to the office, leaving the Defendant in charge of the duty till the Survey Settlement, which took place 8 years ago; when the 1st Defendant refused either to allow the Plaintiff to do duty or to pay anything to him; and praying that an order may be passed declaring the Plaintiff to be a Headman for the office, and to the payment of the portion of the Potagi amount due, and which the Defendants have wrongfully taken:—

The cause of the action arose since 1888.

Subbaraya the 1st Defendant filed the following written statement.—

(1). The agreement alleged denied. It is not valid if true.—

Mly

(2) Father of Plaintiff and also 2nd Defendant's father were dismissed for embezzlement.

18

(3). 1st Defendant became shambogue on the application of his father Ramiah in 1886 and he and his men have performed the duties.

(4) Plaintiff and 2nd Defendant are in collusion; Claim barred.

2nd Defendants written statement ~~admits~~ Admits Plaintiffs allegations.

Issues

(1) Was any agreement entered into between the 3 sons of the original shambogue Ramiah regarding the performance of the duties of shambogue and was the Plaintiffs father and Plaintiff in receipt of their share of the Mines as alleged in plaint?

(2). If so how long was it so received and is the agreement valid and binding on the Defendants.

(3) Is the Plaintiffs claim barred?

may

Judgement

This is a suit for; to establish the shambogue hock of the Bellur Firka of

of the Yedatore Taluk, and for the recovery of a proportionate share in the Pottu allowed to the said Pirkha.

The Plaintiff's statement is, that Kundaiah the original Barawardar executed a will during his life time, by which his four sons Ramiah, Viswesvariah, Nagappiah, and Krishnappiah, were to hold the office of the Pirkhas in rotation of 3 years each, and that they did so for sometime. How long they thus continued to do so, is not clearly shewn. But reading the previous records (Exhibit E, F, G in them) it appears to me that as Ramiah and Krishnappiah held separate Government Employments and Nagappa ceased to exercise the Shanbogue an account of certain Embezzlement, and as Viswesvariah had already been similarly disqualified, a Subbaraya the minor son of Ramappa was elected to the office in 1856 by the common consent of all the shareholders, and a Gumasta named Ramiah was appointed

90 appointed to do the duties of the Pirkha.
The Plaintiff alleges that ever since the
execution of the will Exhibit A and up to
the settlement, first of all Ramappa, after-
him Gurnasta Ramappa, and latterly the
1st Defendant, were paying to him the
Miras. But the latter ceased to do so after
the settlement and about 3 years ago when
the Pirkha was broken into 3 groups by
the Survey Superintendent, he got them
all entered in the name of his 3 sons,
the 3rd 4th + 5th Defendants to the exclusion
and to the prejudice of the Plaintiff, and
refused to pay any portion of the Potgi.

The execution of Exhibit A is admitted
by the Defendant.

In the same manner Exhibit B and
C are also admitted, and from these it is
sufficiently proved that the original
Baramandar Kundurial did stipulated
in the will Exhibit A that his four sons
should enjoy the Pirkha in the rotation
and they accordingly did so for sometime.

The

The part of the 1st issue is therefore determined in the affirmative.

But with regard to the Muras alleged to have been paid to the Plaintiff's father and to himself, the Plaintiff has nothing more to shew than certain receipts II and III said to have been granted by the 1st defendant to the 2nd defendant in which the Muras due to the latter is alleged to have been adjusted for the Kandayam due by him to Cirkar, and endeavouring thereby to raise a weak presumption, that such Muras must also have been paid to him by the 1st defendant, and also adducing some oral evidence on the point. The Plaintiff further states that no written or oral agreement was made to pay this Muras.-

The 1st Defendant charges the receipts in which the word "Muras" is entered as forgery and from the antecedents of the 2nd defendant who was implicated in a case of forgery with his father Viswesworiah, makes these receipts extremely

expediency as none of them were at
to attend to the work for private and
public causes and had to name a
substitute on their behalf in the family
who was most agreeable to all, and so long
as Exhibit A. is admitted to be genuine,
I cannot see how the buck of the Plaintiff
can be set aside. Nagappiah the
Plaintiffs father is shewn to have been
debarred from holding the office in 1855
and he was dismissed by Government,
but it is no where shewn that his buck in
the Shanbogue was expressly taken away
from his family altogether, and thus
although he may have been debarred from
conducting the duties yet so far as the
right is concerned, the Plaintiff,
his son, cannot be deprived of it.—

The cause of action apparently
arose only when ~~that~~ the 1st defendants usurped
the right by transferring the Pirkhas to
the names of his sons the 3rd 4th and 5th
defendants

extremely doubtful. In the same manner the oral evidence adduced on the point is vague and untrustworthy. I therefore determine the 2nd part of the 1st issue in the negative. In the same manner I hold that there is no reliable evidence forthcoming to shew that the Plaintiff received any Muras at any time and for any period.

The chief question on which the case, whether the Plaintiff possesses any huck in the Pinkha depends, on the determination of the latter part of the 2nd issue, namely whether the agreement (Exhibit A) is binding on the defendants. With regard to this, I must first point out that when this defendant was elected to hold the office by common consent of his father and uncles, it does not appear to me that they resigned their huck entirely in his favour: it is only a measure adopted by them to answer an expediency

defendants to the entire exclusion of the Plaintiff about 3 years ago and recently refused to pay any share in the Potgi. The Plaintiff appears to have at once agitated his claim, and eventually preferred this suit to establish a hereditary right within 12 years from the date on which the cause of action arose. I therefore hold the last issue in the affirmative, and decree that the Plaintiff is entitled to $\frac{1}{3}$ share in the Shanboque and to similar share in the Potgi.

The defendant will bear the cost of the Plaintiff.

/Sgnd/ K. Mahaunderlli
Offg Deputy Commissioner
Mysore District

15-8-93 KS. KS.

Copy

Compd
H Ramchandrayya

M G Krishnaiengar
Revenue Sheristadar.
Mysore District

10.

25

Copy applied by M. Subbarow Pleader

on ——— 18-8-93.

Copy ready on ——— 12.9.93.

Copy delivered on 25 10 93 R.

Venkatachalow
Hd Inspector
Mysore
Taluk

Number of words 2135

Copying fee Rupees — 2 - 1 — 0 .

Comparing fee — 0 — 7 — 4

Paper cost ——— 0 — 0 — 10 .

Total Rupees 2 - 9 - 2

Two annas nine and Pies Two only

Superintendent
Impl Copying Office

26

Appeal No. 7 of 23/24

Appellant

Subbayabba
of Tangeeria,
Godatore Taluk,
(Represented by P. & S.
Kandasamy Ayer
Vakkeel)

Respondent

Ramanna
(Represented by
Mr. B. Ramachandra Iyer
Vakkeel)

LR 15-9-15

Plaintiff (Respondent)
sued for the establish-
ment of his right to ⅓
share in the office of
Shanbog of the Kellur
Taluk, Godatore Taluk,
and obtained a decree
in his favour.

Defendants appeals
chiefly on the ground that
the claim is barred by
limitation. The facts of the
case are briefly these:—
One Kunduraik,

who was the original
holder of the office
had four sons, Ramah
Viswanah, Nagappah
and Krishnah. Krishnah
died without issue. Appellant
is the son of Ramappa
Respondent the son of
Nagappa. Viswanah
and Virappa having been
dismissed from office for
malfeasance and
Ramappa and Krishnappa
having been in Court
before the Appellant
was appointed to the office
in 1856, and he has ever
since been doing the duties
uninterruptedly and en-
joying the emoluments
adversely to the Plaintiff
the present suit which

The parties are divided in interest and have been living separately and that Respondent failed to prove that he ever received a share of the emoluments of the office during the last 36 years. There is further no evidence to prove that appellant obtained the office in 1856 under the will or agreement set up by the Respondent or that he satisfied or acquiesced in it. The Settlement pleaded by Plaintiff is therefore not binding on him and he files, as to recovering the Cause of Action is ~~Unfortunate~~ barred.

As Deft has been in adverse possession of the office Plaintiffs claim cannot be entertained. The Decree therefore must be reversed and Plaintiff's suit dismissed to be barred by limitation

No. 30

MYSORE DEWAN'S OFFICE,

PETITION DEPARTMENT,

189

Endorsement granted to Subbarayappa & Sahpuri, Yedatore Taluq

in reply to his Petition Registered No. 1507 dated not dated appealing against the order of the Collector, Hassan directing a Mud Store in the Channapatna Police of Bellur Firka to Remain

Petitioner is informed that

the decree of the Lower Court has been reversed and the Plaint dismissed.

Enclosures are returned

R.P.I. 3/11

L.R. 115-93-5

"By Order"

Chief Secretary.

M. G. C. P. Bangalore—6-3-94.—2000.